DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

APR 14 2000

CC:DOM:IT&A:4ASTucker
WTA-N-107328-00

MEMORANDUM FOR ASSISTANT COMMISSIONER (COLLECTION)
OP:CO

FROM: Acting Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

SUBJECT: Reduction of Failure to Pay Penalty During Installment Agreement

Section 3303 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) amended I.R.C. § 6651 to provide a reduction in an individual's failure to pay penalty when an installment agreement is in effect. We have been asked by John Munroe of your office to assist in determining whether certain specified returns are affected by the enactment of this legislation.

Issue

Whether the planned implementation of this provision by the Office of Interest and Penalty Administration (OIPA) and the BMF/IS programmer will exceed the legal limits. In particular, there is a concern that a programming revision may be necessary to ensure that assessments not generated by individual filers are excluded from the reduction, and conversely, that all returns filed by individuals are subject to the reduction.

Conclusion

The reduction of the failure to pay penalty for individuals during the period of an installment agreement applies to any and all of an individual's tax liabilities that arise under the Code. Consequently, consistent with the discussion below, a programming revision will be necessary.

Background

In December of 1998, OIPA requested Counsel advice regarding whether the failure to file penalty is reduced for an individual's liability for employment taxes under subtitle C (*e.g.*, BMF returns on Form 941, Employer's Quarterly Federal Tax Return, and Form 940, Employer's Annual Federal Unemployment Tax Return) during the period of an installment agreement under § 6651(h). We concluded that the reduction of the failure to pay penalty for individuals during the period of an installment agreement under § 6651(h) applies to all of an individual's tax liabilities. See attached memorandum dated January 22, 1999.

It has come to our attention that our advice has been interpreted more broadly than intended. A "RIS" program change has been established to apply the reduction in the penalty for the following list of tax returns:

Form	Title
1040	United States Individual Income Tax Return
1041	United States Income Tax Return for Estates and Trusts
709	United States Gift (and GST) Tax Return
706	United States Estate Tax Return
2290	Heavy Vehicle Use Tax Return
720	Quarterly Federal Excise Tax Return
940	Employer's Annual Federal Unemployment Tax Return
941	Employer's Quarterly Federal Tax Return
943	Employer's Annual Tax Return for Agricultural Employees
945	Annual Return of Withheld Federal Income Tax

Analysis

Section 6651(a)(2) of the Code imposes a penalty for failure to pay the amount shown as tax on the return on or before the due date prescribed for payment of such tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the penalty is 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 6651(a)(3) of the Code imposes a penalty for failure to pay any amount in respect of any tax required by be shown on a return, which is not so shown, within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The amount of the penalty is 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Section 3303 of RRA 98 added § 6651(h) to the Code to provide that the penalty for failure to pay taxes under § 6651(a)(2) and (a)(3) is reduced with respect to the tax liability of an individual for any month in which an installment payment agreement under § 6159 is in effect, provided the individual filed the tax return that generated the liability in a timely manner (including extensions), and the individual has not received a notice as provided by § 6331(d). The reduction in the amount of the penalty during the installment agreement period is from 0.5 percent to 0.25 percent per month.

As we stated in our earlier memorandum, regulations have not yet been promulgated and the legislative history does not expressly address the question. Nevertheless, we continue to believe that § 6651(h) applies to all of an individual's tax liabilities.

Here, we have the further inquiry of what tax returns specified in the RIS reflect an individual's possible tax liability. The Code does not expressly define the term "individual."[1] But the first definition of the noun "individual" in the American Heritage Dictionary, 2d College Ed., 1982, is "a single human being considered separately from a group or from society."

When interpreting a statute, courts look to the plain meaning of the words. Hong v. Commissioner, 100 T. C. 88 (1993). In Hong, the Tax Court discussed statutory construction in defining the term "individual" for purposes of applying the net worth threshold for awarding attorneys fees. It should be noted that in Hong, the plain meaning of the term was further supported by associated legislative history which expressly stated that the term "individual" means a natural person. Id. at 91.

> The Supreme Court, in United States v. American Trucking Associations, 310 U.S. 534, 542-43 (1940) (quoting Ozawa v. United States, 260 U.S. 178, 194 (1922)), set forth some general principles of statutory interpretation:
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> > In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. * * *
> > There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the

[1] The term "individual" is included in the laundry list of terms that qualify as a "person." Section 7701(a)(1) defines the term "person" to mean and include an individual, a trust, estate, partnership, association, company or corporation. Section 301.7701-6(a) of the regulations further includes within the definition of the term "person," a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

> legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning.

This analysis supports our earlier determination. Accordingly, we reaffirm our conclusion that the reduction of the failure to pay penalty applies to any and all tax returns filed by a natural person during the period of an installment agreement. We now apply this conclusion to the list of forms from the RIS program change: (1) to the extent that an employer is a natural person, any employment tax returns would qualify for the reduction; (2) to the extent that a natural person files a Heavy Vehicle Use Tax Return, any liability subject to an installment agreement would qualify for the reduction; (3) to the extent that a natural person files a Quarterly Federal Excise Tax Return, any liability subject to an installment agreement would qualify for the reduction; (4) to the extent that a natural person files a United States Gift (and GST) Tax Return, any liability subject to an installment agreement would qualify for the reduction. United States Income Tax Returns for Estates and Trusts and United States Estate Tax Returns are not filed with respect to the tax liability of a natural person; instead those returns are filed on behalf of a trust or an estate. Therefore, a RIS program change is necessary to ensure that the Form 1041, United States Income Tax Return for Estates and Trusts, and the Form 706, United States Estate Tax Return, are excluded from the reduction because they are not generated by individual filers.

[redacted] Should you have any further questions about our advice, please contact Andrea Tucker at (202) 622-4940.

HEATHER C. MALOY

By: ______________________
ROCHELLE L. HODES
Senior Technician Reviewer
Branch 4

Attachment:
as stated

cc: Office of Interest and Penalty Administration
OP:EX:ST:P